



UNITED STATES PATENT AND TRADEMARK OFFICE

A
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,193	08/29/2001	Kenneth M. Riff	P0009618.00	8485
27581	7590	01/10/2008	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924				LE, LINH GIANG
ART UNIT		PAPER NUMBER		
3626				
MAIL DATE		DELIVERY MODE		
01/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	09/943,193	RIFF ET AL.
	Examiner	Art Unit
	Michelle Linh-Giang Le	3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 November 2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8, 12, 13, 18-21, 32-34, 39 and 40 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-8, 12-13, 18-21, 32-34, 39-40 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/ are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 November 2007 has been entered.

Double Patenting

2. Claims 1-7 of this application conflict with claim 1-7 of Application No. 10/828,545. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re*

Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

3. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-7 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1-7 of copending Application No. 10/828,545. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 12-13, 18-21, 32-34, 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris (6,669,631) in view of Bahl (6,834,341).

6. As per claim 1, Norris teaches an internet-based method comprising the steps of: providing a networked computing system including a database network site, a patient medical services delivery application program, and a communications channel establishing a data and services delivery path (Norris; Col. 7, lines 34-50); receiving in a substantially continuous manner at the database network site first data inputs uniquely representative of sensed physiologic information from a medical device configuration of a patient (Norris; Col. 7, lines 34-50); enabling the networked computing system to communicate with at least one web-enabled web-site and to receive web-site originated signals requesting access to first data inputs on the database network site and to services provided by the patient medical services delivery application program (Norris; Col. 7, lines 34-50 and Col. 8, lines 18-26);

Norris does not expressly teach:
monitoring the data and service delivery path to determine a user's access to the first data inputs on the database network site and access to the patient medical services delivery application program service, and determining a revenue for the user's access to the networked computing system based upon monitoring of data packages over the data and service delivery path.

However, this is well known in the art as evidenced by Bahl. In particular, Bahl teaches accounting for data packets and billing users based on how much bandwidth one has consumed (Bahl; Col. 18, lines 19-32). It would have been obvious to add this

feature to Norris with the motivation of giving a user Internet access depending on what price they are willing to pay (Bahl; Col. 2, lines 26-35).

7. As per claim 2, Bahl teaches further including the step of providing said web-site and configuring said web-site with a user interface which includes a sign-in input to enable access to said database network site (Bahl; Col. 11, lines 15-30). It would have been obvious to add this feature to Norris with the motivation of giving a user Internet access depending on what price they are willing to pay (Bahl; Col. 2, lines 26-35).

8. As per claim 3, Norris teaches in which the receiving step includes receiving at least one signal carrying information representing sensed physiologic status within the patient from at least one medical device located on or at least partially in the patient's body (Norris; Col. 7, lines 34-50).

9. As per claim 4, Norris teaches the receiving step includes receiving signals carrying information representing actual physiologic phenomenon within the patient as sensed by at least one medical device located on or at least partially in the patient's body (Norris; Col. 7, lines 34-50).

10. As per claim 5, Norris teaches the receiving step includes receiving signals carrying information representing actual physiologic phenomenon within the patient as

sensed by a plurality of medical devices located on or at least partially in the patient's body (Norris; Col. 7, lines 34-50).

11. As per claim 6, Bahl teaches the enabling step comprises providing a secure sign-in and validating an originator's security-related action prior to allowing access of the originator to the database information (Bahl; Col. 11, lines 15-30). It would have been obvious to add this feature to Norris with the motivation of giving a user Internet access depending on what price they are willing to pay (Bahl; Col. 2, lines 26-35).
12. As per claim 7, Norris teaches the first data inputs provides intermediate information to enable further production of data representations enabling subsequent actions (Norris; Col. 7, lines 34-50).
13. Claim 8 repeats the limitations of claims 1-7 and the reasons for rejection are incorporated herein
14. Claims 12-13 repeat limitations of claims 1-7 and the reasons for rejection are incorporated herein.
15. Claim 18 repeats the limitations of claims 1-7 and the reasons for rejection are incorporated herein.

16. As per claim 19, Norris teaches the step of enabling includes initiating automatic software analysis of the first data inputs to determine whether any sensed physiologic activity is abnormal (Norris; Col. 14, lines 35-65).
17. As per claim 20, Norris teaches which step of enabling includes initiating automatic software analysis of the first data inputs to determine actual values for any sensed physiologic activity (Norris; Col. 14, lines 35-65).
18. As per claim 21, Norris teaches the step of enabling includes initiating automatic software analysis of the first data inputs to determine whether any sensed physiologic activity is indicative of a demonstrable or likely pattern of physiological activity (Norris; Col. 14, lines 35-65).
19. Claims 32-34 and 39-40 repeat limitations recited in claims 1-7 and 19-21 and the reasons for rejection are incorporated herein.

Response to Arguments

20. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Linh-Giang Le whose telephone number is 571-272-8207. The examiner can normally be reached on 8 AM - 5PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-3600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MLe

Robert Morgan
ROBERT W. MORGAN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600